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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,298	09/26/2001	Rodrigo Jimenez	J3553(C)	9910

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

NGO, LIEN M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,298

Applicant(s)

JIMENEZ ET AL.

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is confusing whether "frictional interactions" in claim 3, and "an internal projection" in claim 4 are recitations for "a means for releasably holding" in claim 1; and "two opposed projections" in claim 5 a recitation for "an internal projection" in claim 5.

Drawings

3. The proposed drawing corrections filed 5/13/04 have been approved.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Beal (601,117). Beal discloses, in fig. 1 and 2, a package product

comprising a container or bottle 2 and a cover sheath 5, the sheath being closed

at the top and open at the bottom, a means 8 for releasably holding the container, cutaway sections in opposite sides that enable the container to be grasped between a finger and thumb and pulled from the sheath. The bottle comprising a neck body 2 and a cap at its top, both of which are held within the cover sheath when the sheath is in place

Beal does not disclose the sheath being plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Beal cover sheath from plastic in order to reduce cost because plastic is cheaper than metal, and moreover, plastic is easy to work and forms a better seal, also, since it has been held to be within the generally skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Ileshin, 125 USPQ 416.

In regard to claim 2, the Beal sheath comprised concave portion 7 on the outer surface therefor they provide a higher coefficient of friction than the outer surface of the bottle.

5. Claims 1-4, 6-8, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farricielli (Des. 327,431) in view of Beal.

Farricielli discloses, in fig. 1 and 3, a package product comprising a container and a cover sheath, the sheath being closed at the top and open at the bottom, a means (protrusions see in fig. 5) for releasably holding the container, cutaway sections in opposite sides that enable the container to be grasped between a finger and thumb and pulled from the sheath.

Farricielli does not disclose the sheath being plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Farricielli cover sheath from plastic, in order to make a cover sheath with a cheap material, and moreover, plastic is easy to work and forms a better seal, also, since it has been held to be within the generally skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Ileshin, 125 USPQ 416.

Farricielli does not disclose the container having a cap.

Beal teaches a container having a plug or cap 6 which is covered by a sheath.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Farricielli container having a cap or plug to cover the dispensing opening, as taught by Beal, in order to seal the container.

In regard to claim 2, the Farricielli sheath comprised ribs on the outer surface therefor they provide a higher coefficient of friction than the outer surface of the bottle.

In regard to claims 3 and 4, Farricielli sheath in figs. 1 and 2 can hold the container firmly by frictional interactions between the container and the sheath, and comprising an internal projection.

In regard to claim 6, it would be obvious to make the Farricielli sheath being asymmetric shape to correspond a asymmetric shape of the container,

since such modification would have involves a mere change in the shape of a component. A change in size, shape, dimension, etc. is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

In regard to claim 10, Farricielli in view of Beal discloses the invention comprising limitations as claimed; therefore, the Farricielli invention is capable of performing the method as claimed.

Response to Arguments

6. Applicant's arguments filed 5/13/04 have been fully considered but they are not persuasive.

In regard to claim rejection under 35 USC 112, second paragraph, applicant asserts that the "friction interaction" in claim 3 and the "internal projection" of claim 4 are recitations for "a means for releasably holding" in claim 1. However, that is not found convincing because the claims do not define clearly that the "friction interaction" and the "internal projection" are recitations for "a means for releasably holding". In claim 5, the claim does not define that the "two opposed projections" is a recitation for "a means for releasably holding".

Applicant argues that Beal (601,117) does not disclose a "bottle or jar comprising a body and cap at its top, both of which are held with the molded plastic sheath when the mould plastic sheath is in place". It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Beal cover sheath from plastic in order to reduce cost because plastic is cheaper

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than metal, and moreover, plastic is easy to work and forms a better seal. The examiner further considers the neck body 2 in fig. 1 of the Beal as "a body" as claimed. Therefore, Beal teaches bottle comprising a body and cap at its top, both of which are held with the molded plastic sheath when the mould plastic sheath is in place.

Applicant argues that Faricielli does not suggest a cap and a bottle being held with thin a moulded plastic sheath and there is not suggestion a means of protection from physical damage. However, that is found not convincing because Faricielli discloses in fig. 1 a cap or a protection sheath for a dispensing container or bottle (shown in broken lines in fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Farricielli cover sheath from plastic, in order to make a cover sheath with a cheap material, and moreover, plastic is easy to work and forms a better seal. It also is well known in the art to provide a plug or cap for a dispensing container and later cover by a cover sheath, as taught by Beal. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Farricielli container having a cap or plug to cover the dispensing opening, as taught by Beal, in order to seal the container. The limitation of "a means of protection from physical damage" is not required in the claims.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 703-305-0294. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Lien Ngo

August 16, 2004

A handwritten signature in black ink, appearing to read "Lien Ngo", with a long, sweeping horizontal stroke extending to the left.